

STATE OF CALIFORNIA  
OVERSIGHT BOARD HEARING

In the Matter of: ) Docket No. 97-OSB-1  
Electric Industry Restructuring )  
Oversight Board )  
----- )

Friday, March 14, 1997  
10:05 a.m.

Secretary of State's Building  
1500 11th Street  
Sacramento, California 95814

REPORTED BY:

G. PALMER

**OVERSIGHT BOARD MEMBERS**

ROY A. ANDERSON, Oversight Board Chairman

LEWIS W. COLEMAN, Gubernatorial Appointee, Chief Managing  
Director, Montgomery Securities

DIANE MARTINEZ, Assemblywoman

ARCHER F. PUGH, Gubernatorial Appointee and Attorney

JOHN ROZSA, Designee for Senator Peace

**ALSO PRESENT**

PHILIP ROMERO, Governor's Chief Economist  
and Deputy Cabinet Secretary

**OVERSIGHT BOARD STAFF**

GARY HEATH, Executive Director

SHARON HOWELL, Executive Assistant

ERIC N. SALTMARSH, Oversight Board Interim General Counsel

**ALSO PRESENT**  
(Alphabetically Listed)

GARY ACKERMAN, Mock Energy Services

TONY BRAUN, Sacramento Municipal Utility District

MAURY CRUZ, Transmission Agency of Northern California

MARK DAVIS, Southern Energy Trading and Marketing, Inc.

MICHAEL DAY, ENRON

JAMES C. FEIDER, Western Area Power Administration

MICHAEL FLORIO, Utility Reform Network

DAVID FREEMAN, Trustee

GERALD JORDAN, California Municipal Utilities Association

CAROLYN KEHREIN, California Manufactures Association

CHARLES MCCARTHY, New Energy Ventures

KAREN NORENE MILLS, California Farm Bureau Federation

RONALD NUNNALLY, Southern California Edison

BOB SCHEMPP, Metropolitan Water District

JAN SMUTNY-JONES, Independent Power Producers

JEANNE SOLÉ, Hetch Hetchy Water and Power

MICHAEL WARNER, California Department of Water Resources

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## P R O C E E D I N G S

**CHAIRMAN ANDERSON:** Good morning, ladies and gentlemen and, as well, my fellow Board members. I want to welcome you and to call to order the first hearing of the California Oversight Board.

I'm Roy Anderson, and I'm Chairman of the Oversight Board.

Before we begin today's hearing, I would like to introduce members of the newly-constituted Oversight Board.

First are our two legislative members, Assemblywoman Diane Martinez, who is not here yet, and Senator Steve Peace. Senator Peace could not be with us today, but he is being represented by his assistant, Mr. John Rozsa.

The gubernatorial-appointed members are Mr. Archer Pugh, who's to my left, and Mr. Lewis Coleman, to my right.

I would also like to introduce and welcome Dr. Phil Romero, the Governor's Deputy Cabinet Secretary and Chief Economist.

Last, I would like to introduce the Board Staff, Mr. Gary Heath, our Executive Director; Mr. Eric Saltmarsh, our Legal Counsel; and Ms. Sharon Howell, our Executive Assistant.

I would like to take a moment to thank the Governor's

Office and the California Energy Commissioners and their Staff for providing the facility and logistical support for the Board.

As many of you are aware, the Board has no appropriations and must rely on, as Tennessee Williams would say, "the kindness of strangers," or, in this case, the kindness of a sister agency.

The Oversight Board was established in the historic electrical utility restructuring legislation, Assembly Bill 1890, and signed into law by Governor Pete Wilson on September 23rd, 1996.

The Board's statutory mandate is to:

One, oversee the Independent Operator and the Power Exchange.

Two, to determine the composition, in terms of service, and appoint the members of the Governing Boards of the Independent System Operator and the Power Exchange. And,

Three, to take the necessary steps to ensure the earliest possible incorporation of the Independent System Operator and the Power Exchange as separately incorporated public benefit, nonprofit corporations under the California Corporations Code.

For many of you it would be an understatement that the formation of the Independent System Operator and the Power Exchange Governing Boards represents a significant milestone in moving California to a competitive electricity market.

I believe I can speak for my fellow Board Members that

we, as Board Members, will do everything possible to ensure that both Governing Boards are formed as quickly as possible and that both Governing Boards represent all the stakeholders' interests.

To this end, on March 4th the Board issued a public notice for today's hearing.

The purpose of today's hearing is to adopt procedures as necessary to conduct the Board's business and to take public comment on proposals for the composition and terms of service of the governing boards of the Independent System Operator and the Power Exchange.

In addition, the interested parties and stakeholders were directed to file their proposals for the composition of the Independent System Operator and the Power Exchange governing boards and the terms of service for the members of those boards.

Further, the parties wishing to appear before the Board were directed to file a notice of appearance. To date, the Board has received approximately 35 filings from various parties and stakeholders related to the composition of the governing boards.

Packets containing those filings are available in the back of the hearing room. Parties and members of the public wishing to address the Board today on the composition and terms of service of the governing boards should fill out one of the yellow cards and hand it to Mrs. Howell.

Before we get into the main Agenda, I would like to offer

my fellow members on the Board, the Oversight Board, an opportunity for some remarks.

Assemblywoman Martinez, would you like to lead off?

And welcome to this meeting.

**ASSEMBLYWOMAN MARTINEZ:** Thank you.

**CHAIRMAN ANDERSON:** You were introduced before.

**ASSEMBLYWOMAN MARTINEZ:** That's no problem.

First of all, let me start by saying that what we are attempting to undertake here is something that is distinctly California and not necessarily going to be reflective of any other thing that we've seeing across the country. In fact, we're leading in this area.

When the Legislature created the Oversight Board as a result or as part of 1890 last year, we did so knowing that in order to accomplish electric restructuring we are going to need a structure where appeals might be made possible, a structure that would be balanced and fair, and a structure that would allow the State to have more input directly with FERC than we had up to this point.

So we have a number of tasks in mind. We know that there are deadlines that are coming before us. We're mindful of those deadlines. Some of those, obviously I don't think, if we're going to be doing a conscious job and do due diligence here, we're going to be able to meet. And so I think we're going to have to



take those issues up as they come.

Just know that one of the results of these hearings will be that issues that we had possibly not talked about in 1890 might be things that could be handled legislatively. And certainly we'll be keeping an ear toward those issues as they materialize. And that's basically it.

Thank you. And it's also nice to meet the other appointees.

**CHAIRMAN ANDERSON:** Thank you.

Mr. Rozsa, representing Senator Peace.

**MR. ROZSA:** Thank you, Mr. Anderson.

Senator Peace sends his regrets that he couldn't be here in person. He believes that the Oversight Board is probably the keystone to ensuring reliability for the State in relation to its role for the Independent System Operator.

He is interested in ensuring that the features of AB 1890 are implemented as they are written. And he intends to work together with this Board to make certain that occurs.

**CHAIRMAN ANDERSON:** Mr. Archer Pugh.

**MR. PUGH:** Thank you, Mr. Chairman.

All I can say is that it's interesting to get back into the business again at this point in this level. I seem to find nonpaying jobs fairly easy.

[Laughter.]

**MR. PUGH:** It's going to be a challenge. I think we have some time lines ahead. We have some very interesting questions to address. So I hope that in the Board working with all of you out there, who had some background in the material with the TAC over these years, we can implement these matters and implement them in an expeditions manner. And I think we can get forward with that today, hopefully, and proceed on a rapid pace to get these matters implemented, and get the thing working, and do it fairly.

**CHAIRMAN ANDERSON:** Mr. Lewis Coleman.

**MR. COLEMAN:** Thank you, Mr. Chairman.

I have no remarks at this time.

**CHAIRMAN ANDERSON:** Okay. Dr. Romero.

**DR. ROMERO:** Thank you, Mr. Chairman.

Again, I'm Philip Romero, representing Governor Wilson. I'm not an appointee to this Board, but have been very involved in its creation.

I simply want to say that this is one big step in the middle of a long road. The politicians and policymakers and their staff like me have helped to create, to make electricity restructuring as policy a reality and as legislation a reality.

But, as we all know, the challenge comes in taking that policy and getting it actually implemented in terms of the organizations which do not exist now, which do not exist anywhere

in the country, that need to be created from scratch, so that customers get the benefits that the politicians have predicted and that ultimately California can grab a larger share of export markets.

You have a very challenging job ahead of you. And I just want to convey the Governor's thanks and appreciation for your work.

A former governor once talked about "psychic income" a lot, and we certainly hope that you get a lot "psychic income" out of your service, because that's about the only kind we can offer.

**CHAIRMAN ANDERSON:** At this point I would like to turn to our Executive Director for his report, Mr. Gary Heath.

**MR. HEATH:** Thank you, Mr. Chairman, Board Members.

Very quick report. We are now at day ten of the Oversight Board fully functioning as an office and board. In that time we have put out two notices, one for today's hearing, of course, and also for subsequent hearings to be held by the Board on the 19th and 27th of this month.

The 19th we'll be back here in Sacramento at the SMUD Auditorium. On the 27th, however, we will be in San Francisco at the Public Utilities Commission Hearing Room.

I'm happy to report that the staffing levels at the Oversight Board Offices have not changed. We are still at YE 3, working there. So we are somewhat lean, but fully functional.

For the Board Members you have before you a set of comments that were submitted by order from the Board. They represent approximately 35 filings. They're in your binders. Along with that is a specific Agenda for today's hearing.

And at this point, Mr. Chairman, if we could get into the procedural issues for the Board's consideration, we might move this Agenda along a little bit.

And if it's okay with you, I'd like to have Mr. Saltmarsh, counsel to the Board, begin with Item No. 1 on the procedural issues.

**CHAIRMAN ANDERSON:** Sure.

**MR. SALTMARSH:** Item No. 1 is merely a recommendation that the Board adopt, by decision, a determination to use an informal process for the hearings it conducts.

There is no requirement in the nature of these hearings that would dictate a formal hearing structure. A formal hearing normally being those in which all testimony into the record is sworn testimony, subject to cross-examination, and typically occurs where there is a constitutional due process right implicated, because it's a disciplinary hearing or something along those lines.

For the benefit of the persons in the audience, there was a reference in the second notice to this recommendation that it would be to have the hearings conducted consistent with a

Government Code section, which was unfortunately typographically challenged. The proper code citation would be 11445.10. But, in any case, that was presented merely for analogy.

That is a code section that gives Office of Administrative Hearings-bound agencies the option, under conditions such as this, to use an informal hearing process.

The analogy to that section was merely that, along with the informal process, in which the presiding officer determines basically the flow and the schedule of the hearings.

I recommend that the adopted decision of the Board be analogous to that code section and that we start a formal administrative record, that all materials received in docket to date be moved into that record along with the transcript of any hearings we have and any material submitted, which will be docketed by Staff. And that will constitute the record to support any eventual decision of the Board.

**CHAIRMAN ANDERSON:** Could I have a motion to adopt the suggestion?

**MR. PUGH:** So move.

**CHAIRMAN ANDERSON:** All in favor?

**VOICES IN UNISON:** Aye.

**CHAIRMAN ANDERSON:** Would you address the next authorization?

**MR. SALTMARSH:** Yes. As I believe the Board Members

are aware, the present arrangement for staff and facilities is, as to staff, an inter-jurisdictional loan exchange agreement that transfers employees from a sister state agency to the direction and control of the Oversight Board, retaining them on the budget of the donor agency, but putting them, for all other purposes, at the direction of the Board. And, similarly, a lease supply arrangement for use of a facility and some necessary equipment, et cetera.

These documents have been prepared in draft form but have not been executed because they've been awaiting an authorization from the Oversight Board to enter into these. These would continue the staffing and facilities' arrangements of the Board without incurring any cost obligation to the Board.

**CHAIRMAN ANDERSON:** Could I have a motion to that effect?

**MR. PUGH:** So move.

**CHAIRMAN ANDERSON:** All in favor?

**VOICES IN UNISON:** Aye.

**CHAIRMAN ANDERSON:** Eric, the next one?

**MR. SALTMARSH:** The third item would be an authorization from the Board for the Interim Executive Director, Mr. Heath, to tend to the day-to-day business of the Board, putting out notices, authorizing necessary travel, et cetera, in the interim between meetings of the Board without requiring

calling a Board meeting to approve those types of routine day-to-day business matters.

**MR. PUGH:** So move.

**CHAIRMAN ANDERSON:** Moved and --

**MR. COLEMAN:** I'll second it.

**CHAIRMAN ANDERSON:** -- seconded. We've got three votes on it.

**MR. COLEMAN:** Yeah, that's right.

**CHAIRMAN ANDERSON:** Well, unanimously adopted?

**VOICES IN UNISON:** Yes.

**CHAIRMAN ANDERSON:** Okay. Now to the next item, the Board's consideration of the composition and terms of service of the members of the governing boards of the Independent System Operator and the Power Exchange.

First, we would like to hear from Mr. David Freeman. He was instrumental in putting this together. Is Mr. Freeman here?

Well, we'll have to go on without him. And then when he comes in, we can hear him, whenever he comes in.

There are several people who have signed up for comments. And that's what we'll move to next. I understand that you have submitted comments in writing.

**MR. PUGH:** Oh, here's David now.

**CHAIRMAN ANDERSON:** Mr. Freeman, you're on.

**MR. FREEMAN:** I guess I arrived just in time.

**CHAIRMAN ANDERSON:** It's nice to meet you, Mr. Freeman.

**MR. FREEMAN:** Thank you, sir.

**CHAIRMAN ANDERSON:** And I speak on behalf of the members of the Oversight Board. I understand you've been instrumental in putting the framework together, and we're anxious to hear from you.

**MR. FREEMAN:** Mr. Chairman, you're overly generous. I happen to be the human being that personifies hundreds and hundreds and hundreds of people that have been working for probably two years.

I think, as a businessman, you'd appreciate the fact that never in American history has an industry worked so hard to break itself apart.

[Laughter.]

**MR. FREEMAN:** We have a situation here where we have the full cooperation of the electric power industry and all of the stakeholders. And when you talk about "all of the stakeholders" in electric power, sir, you're talking about everybody, because -- and it's kind of interesting, when you start thinking of the issue of conflict of interest of people serving on boards and dealing with electricity, there isn't anyone that doesn't have interest, but there's no conflict.

The whole purpose here is to bring the rates down and



improve the reliability of service, and let competition be a substitute for that rather inefficient function called "regulation" that's been necessary all these years when there was monopoly.

As a person who's been in the electric power industry most of my adult life, I think we can be pretty proud of having come as far as we have with an American version of regulated monopolies. But now we have a better idea here in California, and it's being implemented. And the rest of the world is watching.

And I just happen to be fortunate enough to have inherited a tremendous amount of work. I don't know how to get across to the Oversight Board the breadth and depth of the effort that's gone into thinking through the rules, as well as the hardware and software.

And I think that we are at a point where, while everybody else is talking about it, we're doing it. And we have moved the idea, the concept, the vision from the dreamers to the vendors. And that's a fairly serious move.

All of the hardware and software to build all of the equipment that's needed to dispatch the power plants, to do the scheduling, to do the billing, the whole shooting match has now been thought through and is in the hands of free enterprise vendors that have incentives to get the job done on time, financial incentives, and penalties if they do not.

And so without prolonging this, I think it's fair to report to you that the hardware and software is progressing with a very, very tight schedule. We have no room to spare. But we are, I think, able to see that we can get a system up and running.

Now what we have done, sir, is to distinguish between what's desirable in '98 and '99, and what's absolutely essential January 1, '98, to have a reliable system that has the Power Exchange and the ISO functioning up and running.

So we've made some decisions to build, this year, what's necessary in order to give ourselves a really good chance of getting it done on time.

Now what has happened, sir, is that in the absence in January and February, not only the absence of Oversight Board and the governing boards, but the fact that their staffs weren't there yet, we have done what my mandate suggests, and we've taken the steps necessary to keep the ball rolling.

So we have prepared the thickest filing for FERC ever known to mankind. It's taller than the tallest person on this Board. But it does represent, I think, a work product of the stakeholders. And that's why I'm getting a lot of credit for an awful lot of work that other people are doing. And I am not known for modesty. I mean, this is a true statement.

What we have, I guess the best way to describe it, is a mini-legislature in the best sense of that word. In other words,

the Legislature itself set an example, I think, by passing AB 1890 unanimously. And we've tried to follow that example by all of the stakeholders. And it does represent the vast array of everyone in the State working together to come up with the rules that will, at least initially until the boards are in place, control.

Let me just give you an example of one issue, that is really very important, that we've hammered out a solution to.

Sure, these utilities are going to turn over their transmission lines to something new called the ISO. Now there are businessmen here. They're not in the habit of turning their property over to somebody else very lightly. And the utilities -- you know, especially something that doesn't exist yet and that's nonprofit.

And so we have worked out an agreement where they not only will turn over their lines, but agree that they can't take them back unless the federal agencies approve, or the appropriate state body, whoever has jurisdiction.

But they've agreed that if we have congestion on this highway, in other words, if the number of electrons that wants to go over the transmission system in certain paths exceed the capacity, that we will expand the system.

And they have taken on the solemn obligation, sort of in the blind -- not knowing what the rate of return is going to be -- but they have said that we will build whatever the Independent

System Operator, with review possibilities, believes is needed, either for reliability or economy so that in the future, if we get some price signals that tell us that we need three lines of highway, if I can use that analogy, rather than two, that the third lane will be built.

And then, as a safety valve, in case for some unforeseen reason they don't do it, the ISO will have the authority to go out and contract with third parties to get the expansion built.

And we will seek from the Legislature a limited power of eminent domain so that if some third party needs eminent domain, in order to build, we hope we can get it.

We do not want to confer a now monopoly right, in the name of competition, to the utilities to build the lines, no matter how they cost or whatever.

So the point I'm saying is an issue as difficult and fundamental as that has been worked out. This filing will be made in the name of the State of California and on behalf of all of the members of the advisory committees. And we will meet the deadline of March 31st. And we will be advocating measures that reflect the laws of the State of California.

I do have a suggestion, if I may. Now concluding my report of what we've done, and moving into what this body has before it, you have the awesome task of naming the initial governors to these governing boards.

And if this is the appropriate time to get into that, I would think that there's going to be two distinct periods in the life of these governing boards.

One is the year 1997 where we are still building the infrastructure and not making any money at all. They have no revenues in 1997. They're dependent on the trust. And we will be very quick to grant their request for funds for start-up. But it's a different proposition before you get in business than it will be after they're in business.

And I guess what I was thinking of, as I've thought about this, is that we have the people that have been serving on the technical advisory committees that are very, very knowledgeable, not just about the hardware and software. But we have been doing some initial work thinking through the human resource needs that the ISO and the PX will require, as well as the filing before FERC.

And I would like to suggest that you invite the various interest groups, in a very short period of time, to nominate for you the classes -- within their respective classes -- human beings, who in most cases, I suspect, will be the human beings that have served up to now and who are knowledgeable about the filings, who have actually hammered out the compromises and are knowledgeable about the human resource needs.

And I would suggest that the term, initial term, end at

the end of year 1997. That does not mean that some of these people you might decide to reappoint. But that would give you an opportunity to have a core group. The boards, of course, will be larger than the advisory committee. But it would give you a core group of people familiar with what's going on in 1997. You can look them over and then have some of them either reappointed or new people at the beginning of 1998.

**ASSEMBLYWOMAN MARTINEZ:** May I ask question?

**CHAIRMAN ANDERSON:** Yes.

**ASSEMBLYWOMAN MARTINEZ:** Is the proposal that the original core group be self-nominated from the various classes?

**MR. FREEMAN:** Yes. I perhaps should have -- I'm assuming that that's well known, and that was my error. I should have described that.

The process that the advisory committees have put together in the Bylaws that we propose that you adopt really -- and I'm adding this suggestion to it -- would involve two keys to open the door, in a sense, that you would ask the classes to have a little election and nominate somebody. And then it would be up to the Oversight Board to decide whether to accept that nominee or not.

**ASSEMBLYWOMAN MARTINEZ:** Then is it your opinion that we have adequately defined the classes so that we know who ought to be doing the nominating?

**MR. FREEMAN:** We have -- and here again I skipped over an essential element of what I need to say -- the advisory committees, over a long period of time, have hammered the compromise that defines the classes rather precise.

It says that there should be three representatives from the investor-owned utilities, X number of representatives from the municipal-owned utilities, X people from the marketing folks.

So we have a rather detailed composition of the Board's proposal that has been agreed to as a compromise by all of the stakeholders, which we recommend to you to adopt as the composition. That would define the classes sufficiently to have or to suggest to them that in their own way they nominate to you someone, say, within a week.

**ASSEMBLYWOMAN MARTINEZ:** Well, wouldn't one of the stakeholders be the Legislature?

**MR. FREEMAN:** Well, I think that certainly could be the case. And I think the definition of nonmarket participants who would perhaps include members of the Legislature.

**ASSEMBLYWOMAN MARTINEZ:** Whether we are actually represented or not, it really isn't the point. I think that if you represent that all the stakeholders have agreed to your proposal that one of the entities that ought to be agreed in the proposal ought to be the Legislature. And as far as I know we haven't done that.

**MR. FREEMAN:** Well, the Legislature makes the law. I mean, you're the high and mighty power that we observe. The Legislature has passed AB 1890, which is our Bible, and which is what we are adhering to.

**ASSEMBLYWOMAN MARTINEZ:** I guess the concern I have is that there, since we passed 1890, there have been various and sundry interpretations of it, some of which don't sound anything like what we discussed when we crafted 1890. So I'm just wondering whether or not it would be appropriate as --

**UNIDENTIFIED VOICE:** I can't hear you.

**ASSEMBLYWOMAN MARTINEZ:** I'm just wondering whether or not it might not be appropriate as we go forward for you to, as you believe you were interpreting what we wrote, check back with us, find out whether or not we concur.

**MR. FREEMAN:** We have appeared at every Oversight Hearing that's been called and been responsive to every phone call that we've received.

The statute, I think, is an excellent statute and speaks rather clearly. And we're trying to be very, very observant of it. I think, when we use the term "stakeholder," we're talking about, I think, ordinarily, the various consumer and marketing and utility groups.

The Legislature is on a plane above all that. It's much more than a stakeholder; it's the boss. But it speaks, frankly,



through legislation.

**ASSEMBLYWOMAN MARTINEZ:** Well, I think it's our opinion generally that we should not have to relegislate something that we thought was clear, although you represent that you think it is clear.

And I guess I would agree with you that a number of parties think it's clear and yet they don't agree as to what it says.

So I think, you know, I guess I could write legislation all day and all night. I don't want to do that. If there's a way that we can get some kind of feeling ahead of time that there is some concurrence, I think it would save a lot of muss and fuss. But that's basically it. I just, you know, when you represented --

**MR. FREEMAN:** Yeah. Well, Madam Chairman [sic], we're very observant of the law. And as far as I know there's nothing ambiguous about the hardware and software that we're pursuing, or about the need to make the file and get FERC, or about --

**ASSEMBLYWOMAN MARTINEZ:** Might I ask you a short simple, different question -- and I pretty much understand where you're going with this.

When you talked about the need for -- that we might have to expand infrastructure, or expand capacity -- that that need might eventually come, you also mentioned that in your filing, if

I'm understanding you properly, that it was your intention to recommend that the traditional monopoly utilities be the first afforded the possibility of bidding that or providing that service; is that right?

And I was just wondering if that was, in fact, accurate, why -- and you said the fallback position, if they didn't do that, would be go out and bid it. I was just wondering why we wouldn't automatically go out and bid it in any competitive arena?

**MR. FREEMAN:** Well, for one reason is most of the expansions will be on the rights-of-way that exist. And with lines that the IOUs own and that they have the people that maintain them. And they have the right of eminent domain.

The Legislature, in its wisdom, has not yet conferred the right of eminent domain on anyone else. And if you've been in this business, like I have most of your life, you know it's hard enough to acquire right-of-way and build a transmission line even with the right of eminent domain --

**ASSEMBLYWOMAN MARTINEZ:** But you did suggest --

**MR. FREEMAN:** -- if I might finish my answer?

**ASSEMBLYWOMAN MARTINEZ:** Thank you.

**MR. FREEMAN:** But without it, it's a very, very difficult thing. That's why one of the recommendations is that perhaps in the future you might want to confer that.

In the interim, we want to get those lines built. We're

not just writing a treatise. We're about to move into a competitive era. And we have a system of pricing that will give a price signal if there's congestion.

And the response to that has got to be to relieve the congestion, and so that the rates will come down, and not keep that congestion in pricing.

And this was, as I informed everyone, a compromise. No one on the committee suggested a possibility of leaving the people out who had built all the lines, who own all the lines, that were turning their lines over to us, and who have the expertise in doing this.

**ASSEMBLYWOMAN MARTINEZ:** I don't understand that. I guess what I would like to know, you had mentioned that the Legislature would possibly look at a further point about changing eminent domain so that there could be other parties who might put in and expand the existing infrastructure.

I'm just wondering if it's your opinion then that, maybe instead of waiting until we hit that capacity and we have that need and there's a lag time for that to be filled, that maybe we ought to lead with legislation now before the need develops that would make that eminent domain a possibility for any other third party.

**MR. FREEMAN:** We were just drafting our -

**MR. PUGH:** Well, excuse me, Mr. Chairman. May I

interrupt a minute?

**CHAIRMAN ANDERSON:** Yes.

**MR. PUGH:** I think we're getting off the topic as to what we're doing here now. Those are issues to be undertaken when we deal with the filing, which is the ISO and the PX's obligations, not our obligation. And nothing we really here have a say in.

**CHAIRMAN ANDERSON:** Yes.

**MR. PUGH:** Those are issues that will be in the FERC filing. The FERC filing will have to be approved by the ISO and the PX to go out and so approve it. We don't approve it.

**ASSEMBLYWOMAN MARTINEZ:** The only reason, Mr. Archer, [sic] that I think that we might be concerned about it is, because there's a possibility that we will also do a separate filing. And so it's -

**MR. PUGH:** Who's "we"?

**ASSEMBLYWOMAN MARTINEZ:** That this body might also do a separate filing before FERC is a possibility.

**MR. FREEMAN:** I certainly hope not. I mean quite frankly, you know, we're trying to present a united point of view. The strength of the filing is that we have the nonlegislative stakeholders, to describe it more accurately, together.

And the strength of our position, in Washington, is that this filing, which has been laboriously worked out over a long

period of time, reflects the combined judgment of the people that are going to participate in the marketplace. They're going to pay the bill.

**MR. PUGH:** Well, I would just add to this point that it, you know, was not my understanding in legislation or in the discussions regarding my appointment that I'd be in a position where we would be doing FERC filings as the Oversight Board. I've been involved in some of those in the past, and I didn't volunteer for that job. Sorry.

**MR. FREEMAN:** Certainly not at the pay you're getting.

**MR. PUGH:** Yes, right.

**CHAIRMAN ANDERSON:** I think that if there's any questions with the filings that has to be ironed out before they go in.

**MR. FREEMAN:** And we wouldn't --

**ASSEMBLYWOMAN MARTINEZ:** Well, the problem is I guess the timing right now is that this first filing is due by the 31st.

**CHAIRMAN ANDERSON:** Yes, yes.

**ASSEMBLYWOMAN MARTINEZ:** And, you know, we are, in fact, the Oversight Board. And I believe it was our intent in the legislation that the Oversight Board would, in fact, have an opinion that they would register at FERC. And that would, for the most part, represent the State's opinion.

That's one of the reasons why that the Legislature, when we created this Oversight Board, included members from the Legislature, specifically myself and Mr. Peace being appointed, was because we knew what our intent was, that that was not described or disclosed fully.

You know, I can't talk to you. This matter -- this whole thing came about rather haphazardly and quickly because of time constraints.

But I don't think we ought to rule out the possibility that this Board will weigh in with FERC and that we might end up, as a Board, having different opinions than those of other State agencies. If the issue is a united front, I don't know that they're going to be able to accomplish that unless there's a buy-in from all of the different factions, including the Legislature itself.

**MR. PUGH:** Are we adequately staffed, or will we be adequately staffed and funded to prepare a FERC filing comment?

**ASSEMBLYWOMAN MARTINEZ:** At this point I believe that we could file something with FERC on the 31st. And I would hope that what we did file on the 31st would be something that would tell them that, you know, having just recently been appointed and attempting to do our job properly, that they would wait for our comments within a 45-day period of their deadline.

And I think we ought to create that as a possibility,

but not necessarily limit ourselves.

In terms of the budget and the staffing, I think that even with the three whole people we have right now, I think they're capable, and I think we can do that.

But if, in fact, this body thinks it needs additional staffing, I believe that we're in the -- we're starting to put together our State budget process and that something that we could certainly legislate is we could create a budget for this. If we, in fact, need to do that I think it would be worthwhile to do so.

**MR. PUGH:** Well, are you talking in relation then to a limited filing that's only going to address certain specific issues and not the overall issues that need to be addressed in the FERC filing that goes in the 31st that's necessary to put all these in place? You're taking some pieces of that and trying to address them?

**ASSEMBLYWOMAN MARTINEZ:** Yes.

**MR. FREEMAN:** Ms. Martinez, I would just gently suggest that all the hard work of the constituents of the Legislature that has gone into putting together what we proposed be reviewed by your staff to find out whether or not you have any disagreement. We have been working mightily, in open session week after week, for months.

And the strength of the filing is not just in the results of our work but the unanimity that we have painstakingly

achieved with people who hardly ever did anything but fuss with each other in the past, namely, the municipal utilities, and the industrial utilities, the environmental folks, TURN, the agricultural interest. We have everybody there.

And this process, I think as a Legislature you'd appreciate, has been a beautiful process. And I would hope that it would be given some respect by your staff and yourself. And then after you have gone over it, perhaps we could talk.

**ASSEMBLYWOMAN MARTINEZ:** Well, I appreciate your gentleness in those comments. But we also have been through the similar process. As you know, when we did 1890, it was done in a very public manner. It was televised. And when we did that all of the same parties that you alluded to were participating as well.

So we know your task and we respect your work, but people might come to different conclusions. And I think that, when I remember us designing 1890 and designing the Oversight Board, we were looking into the future.

And in that future plan we were aware that there was federal legislation that was being crafted where the Oversight Board would be, probably in terms of ranking its opinion, on a bit of a higher level. So it's --

**MR. FREEMAN:** Well, if I could just make one more comment without overstating what I did. We're trying to win at



FERC, trying real hard to win.

And FERC now has an interim opinion that questions what the role of the Oversight Board should be. They have directed that the representatives of the ISO and PX file on certain matters.

I am going to advocate in the filing a very broad and continuing role for the Oversight Board. And I'm happy to share my arguments. I think that actually FERC overlooked some arguments in its initial decision.

**ASSEMBLYWOMAN MARTINEZ:** Right. We do understand.

**MR. FREEMAN:** But I think it would be a strategic mistake for the Oversight Board to move into this filing when FERC has asked that the filing come from the ISO and the PX and where we're trying to persuade FERC that this Board has a extremely important permanent role to play. As a lawyer, I'm just pleading with you to help us let us win our case.

**ASSEMBLYWOMAN MARTINEZ:** Maybe it's just an issue of sequencing. The ISO has not been formally established yet in terms of the membership and so forth. And there's a good possibility that won't happen prior to the 31st. We want to --

**MR. FREEMAN:** And if I might say so, and I'm trying to make some suggestions that will facilitate your being able to do that --

**ASSEMBLYWOMAN MARTINEZ:** Well, if I might just

finish, and that might help you understand where I'm going with it.

What I want to do is create the possibility that the ISO might, in fact, have a different opinion. They may not. But inasmuch as that ISO is going to be an important entity, then we ought to open the door and create the possibility that they might, in fact, once they're appointed, do a filing.

Now I understand FERC's temperament with regard to the Oversight Board itself, and I'm aware of their comments. But I also understand at the same time that was probably well before legislation started being crafted out of Arkansas that it seemed to be telling FERC they have a different -- that the Legislature --

**MR. FREEMAN:** We're going to do better than Arkansas.

**ASSEMBLYWOMAN MARTINEZ:** That might be. Well, I'm just telling you that it looks like a credible piece of legislation will be coming out of Arkansas that's going to confer considerable powers on the ISO.

And so we don't want to necessarily, you know, bind their hands at this point, which is creating possibilities for them. They may well bolster your arguments in front of FERC. But we need to have that possibility out there.

And if they don't, then you still have the possibility of working closely with the ISO. I would just not want this body

to think or to represent that the only possibility will be the trustees.

**MR. FREEMAN:** I think we're all together on this.

**ASSEMBLYWOMAN MARTINEZ:** Great. Thank you.

**MR. FREEMAN:** And if your staff could come by and sit down and talk with us, I think we can alleviate any concerns you have.

**ASSEMBLYWOMAN MARTINEZ:** Thank you.

**MR. COLEMAN:** Excuse me, Mr. Freeman. Can I ask you just one question for my own edification?

Can the ISO and the Power Exchange file the initial filings with FERC by the 31st without having a board appointed?

**MR. FREEMAN:** As a trustee for those two agencies, I intend to file on their behalf, if they're not appointed. We have to make a reply filing on May 15th. And I have every reason to believe that the boards will be in place before May 15th, at which time they will have every right to modify or ratify what we've filed and make the reply filing on May 15th.

So I think that, while technically the boards may not be formally appointed before the 31st of March, that as a practical matter it doesn't make any difference.

I might also say that I hope that if you follow the approach of letting the various classes select and then you ratify the selections or turn them down, as the case may be, that there

will be a critical mass of people on these two boards initially that have done the work with me of putting the filing together, so that there is every reason to believe that what they've decided, as TAC members, will be acceptable to them as governors.

**MR. COLEMAN:** But you believe at this point we can make the March 31st filings without action from the Oversight Board?

**MR. FREEMAN:** Yes, sir.

**MR. COLEMAN:** And that it would be more preferable to modify those filings by May with a board intact?

**MR. FREEMAN:** Yes, if modification is necessary. I guess we're -- I guess you'd call us arrogant enough to believe that the work that we've done will meet the approval of the boards, but they could change it. They'll have every opportunity to revise it in their reply filing.

The procedure is we file March 31st. Other parties have 30 days to file. And then we have a chance to reply to those filings. And so I have every confidence that this Board will name the governors before May 15th. And so that will cure any concern that anyone has.

**MR. COLEMAN:** And your current suggestion that we name the existing Technical Advisory Committee members is a recommendation that both we accept your recommendations as to the various categories or classes of representatives on the board and

look very closely at those people who have already been involved?

**MR. FREEMAN:** Yes, sir. I didn't go quite so far as to say that you should name those individuals. I think that there ought to be an opportunity for the classes to reassess whether they want the person and, of course, the government agencies to reassess.

But giving them a very short period of time to say their existing representative shouldn't continue for the rest of the year or not would give you that. And then I respect this Board's right to either accept or reject those names.

And then you have additional places to fill because our proposal for composition suggests a larger board than the advisory committees are at present.

**DR. ROMERO:** Mr. Chairman, --

**CHAIRMAN ANDERSON:** What you're suggesting is that the current members of the advisory committee be a temporary board --

**MR. FREEMAN:** Yes, sir.

**CHAIRMAN ANDERSON:** -- to give us time to fully flush out the Board. How many people would there be on the ISO and the PX?

**MR. FREEMAN:** There are 14, as I recall.

**CHAIRMAN ANDERSON:** Fourteen?

**MR. FREEMAN:** Fourteen. There would be a majority.

And perhaps the classes would want to name someone other than those that are serving. But I think the idea of going ahead essentially with people that are experienced during this 1997 period has some merit.

**CHAIRMAN ANDERSON:** Dr. Romero?

**DR. ROMERO:** Thank you, Mr. Chairman.

A follow-up, David, on this notion that you would file March 31st and that this appointed Board would fill May 15. You have good relationships with several of the FERC Commissioners.

Can you just characterize -- I think the Board ought to hear your appraisal of how you think FERC -- how receptive FERC would be to that approach.

**MR. PUGH:** Could I add to that question, Peter, if I might a minute.

**DR. ROMERO:** Yes.

**MR. PUGH:** And you're satisfied, Mr. Freeman, that the jurisdictional question of who made the filing is not going to make a difference when we have a new organization, a new corporation with a new board that comes onboard after the FERC filing has been done by you as a trustee?

**MR. FREEMAN:** I'm quite confident. The FERC organization at the top is aware that California is the seventh largest economy on earth. They are aware that we are putting literally millions of dollars into -- many millions of dollars

into hardware and software that's premised upon the designs that we have incorporated in the filing.

They have approved a preliminary filing that has been made by the investor-owned utilities. In that filing they simply said that they would like certain portions of the final filing to be made independent of the IOUs on behalf of the ISO and PX.

They are aware that we have employed the most able counsel on this earth to do this filing for us and that we are going to provide them with the most extensive analysis and understanding and details of how to move from monopoly to competition.

This is not an easy task, and it's not a small task. This filing will be essentially nearly 1,000 pages of technical details describing how all these pieces can fit together.

We have to prove to FERC that there is sufficient competition to replace cost-base regulation. We have to prove that we've set up independent ISOs and Power Exchanges. And we have a massive effort underway.

I obviously cannot have any personal conversations with the FERC Commissioners at this time, because they have ex-parte rules. But they are anxiously awaiting our filing. And there's no question that, as the trustee for the ISO and the PX, that I am quite capable of making the filing.

But the beauty of it is that we have a chance to file a

reply filing on May 15. And these boards, if they have a different view than what's in the filing, will be capable of revising it and so stating.

FERC itself will not seriously consider this material until everyone's had a chance to speak and we reply, which will take until May 15th. So I think that we are in good shape.

I'm proud of the fact, quite frankly, that we didn't sit back and let a vacuum occur. But with the encouragement of the Public Utilities Commission and Dr. Romero, we have moved to make sure that we are filing, not only timely, but adequately.

**ASSEMBLYWOMAN MARTINEZ:** Gentlemen, I'd like to suggest that we are just a little out of sync, and maybe I can clear it up a little bit.

It wasn't my intent, and nor did I, when I made those comments, that we should file a filing that was necessarily in conflict with what the trustee was doing.

The issue is that since FERC had asked for the ISO to file and the ISO is not yet formed that the ISO still ought to have an opportunity to weigh in. And the filing that we ought to make before the FERC is to let them know where we are in that process and to leave the door open for allowing the ISO, when it is created, to make the filing the FERC originally requested.

So it's not necessarily to be in conflict with your work at all. It is meant because the legislation, as I mentioned in



Arkansas, is looking at the significance of the weight of what the ISO does to make sure that California's ISO has an opportunity to weigh in.

Does that clarify it?

**MR. FREEMAN:** I agree that you're trying to be helpful. And all I pray is that we let the learned counsel, that we're paying large sums of money per hour, to advise us on just how this Oversight Board might be the most persuasive before the FERC. And I think you have a good point.

It could be that a letter from this Board or a statement of some kind would be very, very helpful. And if we could work with you and your staff and counsel that's representing us, I think we can work this out.

**ASSEMBLYWOMAN MARTINEZ:** I guess I would like that done more in conjunction with the Oversight Board than myself as an individual. And so if you all agree that that's something that we ought to pursue in order to make the FERC deadline and allow the ISO an opportunity to finally weigh in, then it sounds like it would work well.

**MR. PUGH:** I think that there's no question that that needs to be done if, in fact, the trustee is going to be filing the FERC filing on behalf of an entity that's going to be created thereafter, that something has to be adhered to so that entity can have its right to speak to that filing, as well as direction from

us, because basically what's occurring, as I gather from the material, that filing will include the proposed formations of the categories, the number of board members and the data in the Bylaws with regard to how each entity is to be selected.

**MR. FREEMAN:** But it will certainly follow any actions that you take today.

**MR. PUGH:** No. But I mean those I gather are in the FERC filing?

**MR. FREEMAN:** Yes, sir

**MR. PUGH:** All right. And so they would be filed before we may even have an opportunity to accept those as being the categories that we desire to have or the composition and the methodology of how they're selected.

**MR. FREEMAN:** They will --

**MR. PUGH:** That could occur, is all I was saying.

**MR. FREEMAN:** They will obviously reflect any actions you take today and any guidance we get and recognize that this filing is simply the suggestion of a group of people. And FERC will decide.

**MR. PUGH:** Well, I'm just concerned that we make -- that we don't get ourselves in the position where we're making conjunctive filings that don't quite jibe and don't quite agree.

**MR. FREEMAN:** That's right.

**MR. PUGH:** And that we end at FERC with California

entities arguing among themselves --

**CHAIRMAN ANDERSON:** Right.

**MR. PUGH:** -- how the filing ought to be. And so that's why I'm saying I want to make sure what's in that filing so we have some idea. If we really want to say between now and the 31st that no, I don't think that's the way we ought to go, let's take a look at this something differently before we get it filed.

**MR. FREEMAN:** But we would -- we would --

**MR. PUGH:** I hope we don't do that, but I just want to make sure that door is open.

**MR. FREEMAN:** We would welcome any kind of cooperation of that kind, and I agree with you completely. Our strength is to have California be together before FERC.

**CHAIRMAN ANDERSON:** Well, I was under the impression that we had to file the board make-up with the filing on March 31st.

**MR. FREEMAN:** Yes, sir. And, of course, if you take an action, that's what we'll file.

**CHAIRMAN ANDERSON:** Yes. And you're suggesting that the temporary board concept, through the end of the year, and that would give us time to really examine a total board, additional members on the board, before the end of the year.

**MR. FREEMAN:** Yes, sir. And if you decide to do that, that's exactly what we'll say in the filing.

**ASSEMBLYWOMAN MARTINEZ:** I would discourage the committee from doing that. I think that, while we might need an interim board, in part that will depend on whether or not FERC accepts our pleading that we ought to be allowed time to do a good job of this and that, you know, we're well on our way.

I think if we make our representation to FERC that this is where we are, this is what we've done, this is where we're going, given those deadlines, they can deal with that to the extent that we need to put in a temporary board.

However, I would suggest that it be limited somewhere under 90 days. I think that will be in sync with other FERC filings that are being required. It will give us a deadline to hit.

But, in addition to that, there is some concern that the temporary board may be weighted, the representation on that temporary board may be weighted in one direction or another and not truly balanced.

And if they are there in the early days of the formation, then that could change outcomes forever in terms of the overall board. I don't think that ought to happen.

I think what ought to happen is, if we agree that it's temporary, that the temporary be somewhat under 90 days and that it be in some time like maybe the lawyers can share with us that coincides with, you know, FERC's requirements. There might be a

more logical time line.

Otherwise, a year is arbitrary at best and unfortunately it creates a possibility that outcomes will be determined by a board that's not as well balanced as the legislation intended.

**CHAIRMAN ANDERSON:** All right. Well, the --

**MR. FREEMAN:** Mr. Chairman, let me be sure that my suggestion is understood. We have a proposal, hammered out at great length, for a permanent solution to the composition of the board. And there's nothing -- we're not -- our proposal, there's nothing temporary about that. That's a very delicate balance that's been worked out. And --

**CHAIRMAN ANDERSON:** Yes, we've seen that. We've seen that.

**MR. FREEMAN:** And the only temporary aspect of this is that -- and it's just a suggestion -- that it might make sense to appoint initially people for a short term because the workload in 1997 is a sort of a construction. Getting it started, the workload --

**CHAIRMAN ANDERSON:** Maybe 60 to 90 days, as the Assemblywoman suggests?

**MR. PUGH:** Well, I'm not sure we're there. If the filing goes in without a board and we have the time then to put the board together, there's really not a great need for that.

My thought earlier on the temporary board, Mr. Freeman,

was that we had to have a board to approve to the filing to go. If we don't have to have a board to approve the filing, the filing can be made right away, we have time to put the board together in a timely manner for the permanent board and let it run through, and not have to do this interim: You're in today, you're out tomorrow, and a new guy takes-the-chair-over routine.

**MR. FREEMAN:** And that whatever the Oversight Board decides, the thought was that having some of these folks that have wrestled with these problems on that board wouldn't be a bad idea.

**MR. PUGH:** My guess is you're going to have them anyway, Mr. Freeman. If you just take a look at the composition you're requesting and how many bodies are there and who's going to nominate them. I mean it's -- there are not going to be many heads changed, I don't think.

**CHAIRMAN ANDERSON:** Okay.

**MR. COLEMAN:** I have another question for --

**CHAIRMAN ANDERSON:** Yes.

**MR. COLEMAN:** -- Mr. Freeman. This is a slight change in the subject. But I understand that the Bylaws are not going to be made available to this Board.

**MR. PUGH:** We have them right here.

**MR. FREEMAN:** Your staff has them available.

**MR. PUGH:** They're in your black binder there.

**MR. COLEMAN:** We just received them. Thank you.

**MR. FREEMAN:** Better late than never.

**MR. COLEMAN:** No, I mean I understand some of the concerns. It just struck me as being a little odd that we had to pick players when we didn't know what rules they were going to be operating under.

**MR. FREEMAN:** I think that matter has been resolved.

**MR. COLEMAN:** Okay. Thank you.

**CHAIRMAN ANDERSON:** Thank you, Mr. Freeman.

**MR. FREEMAN:** Well, thank you, sir.

**CHAIRMAN ANDERSON:** Thanks for taking the time to come in and visit with us.

**MR. FREEMAN:** It's my privilege and pleasure.

**CHAIRMAN ANDERSON:** Thank you.

Let's get on with the public comment. As I said, I was beginning to state before, you have written filings, I understand. And if you would strictly summarize those filings and keep them within -- keep your comments within five or ten minutes, we'd appreciate it, because we've got -- how many, Sharon, do you have, beyond the list that I have?

**MS. HOWELL:** I don't believe there are any beyond the list.

**CHAIRMAN ANDERSON:** Okay. All right, fine.

All right, Mr. Jan Smutny-Jones. Will you introduce yourself and state the organization you're representing?

**MR. SMUTNY-JONES:** I would be happy to, Mr. Chairman.

My name is Jan Smutny-Jones. I'm the Executive Director of the Independent Energy Producer's Association. We are an association of various independent energy providers. And we include both renewables and gas-oil generation, as well as power marketers.

And I can take much less than five minutes. I wasn't sure from the previous agenda if this was going to be a beauty contest today or not. Apparently it's not, so I will just be very brief and won't twirl a baton or do anything else.

It is -- we've been working very hard. We have in part with both the Power Exchange, as well as the ISO Technical advisory committees, as well as we've been working on the WEPEX steering committee.

As Mr. Freeman indicated, there's a lot of work that has gone into these things. And we would urge some continuity at least between now and the initial filing. Let's get that done and show a unified voice in Washington.

I think it is important, and I think the way it's structured now for the permanent boards, governing boards and this Oversight Board, to provide further information, if necessary, in the May filings, and that would certainly be appropriate.

And with that, I'm done. Thank you.

**CHAIRMAN ANDERSON:** Thank you very much. He's an



example of brevity.

Mr. Gerald Jordan.

**MR. JORDAN:** Thank you. I'll try to be as brief as Mr. Smutny-Jones was. We have support --

**CHAIRMAN ANDERSON:** Will you state who you represent?

**MR. JORDAN:** Yes. Jerry Jordan with the California Municipal Utilities Association.

We support the proposal -- the trustee. In fact, we have already submitted to you names of nominees based upon what we believe to be the new structure. And we can see some value in having the Board actually endorse the filing on the 31st. But we're ready to go whether you do it now or whether you do after the 31st. So we're supportive of either approach.

**CHAIRMAN ANDERSON:** Thank you, thank you.

Mr. Florio?

**MR. FLORIO:** Good morning. My name is Michael Florio. I'm the Senior Attorney for the Utility Reform Network, which is an organization that has represented residential consumers in energy-related proceedings before the CPUC for about 25 years.

We did submit some written comments which somehow didn't find their way into the package. So I think I have just enough for the members of the Board. I don't think in substance they're very different from what you're hearing from most of the other people.

There has been a long and tortuous process of coming to agreement among the stakeholder groups on the composition of a board. And that's attached to my comments, and I think it's attached to several other parties, as well.

That structure does have wide support. And behind that are these draft Bylaws that indicate how each of these groups would pick its members.

I think there's a lot of merit in what Mr. Freeman suggests that maybe the initial term for these board members just run through the end of the year. Because, after all, we're proposing this to FERC.

And there's always a possibility that in their decision they may decide they don't like that composition for some reason. I mean obviously we hope that won't happen, but they do have that authority. So if everyone's term runs through the end of the year, it would be easy to make any changes that FERC advocates.

I guess my only comment as a representative of residential customers, we have one slot on the ISO board and two on the PX board. That's not very much with the customer class that's by far the largest. So we would hope that in selecting the at-large end-user representatives that the residential class would get some consideration there, as well. But we think that the processes that have been proposed in the draft Bylaws are reasonable and will get the job done.

Thank you very much.

**MR. COLEMAN:** Could I ask --

**CHAIRMAN ANDERSON:** Yes.

**MR. COLEMAN:** Excuse me. One quick question here.

What you're saying is that it's okay if we go along with the suggestion, but if we decide to change our minds then we ought to add more representation from the residential sector?

**MR. FLORIO:** Yes, or -- yes. There's provision for several at-large end-user representatives that aren't designated as being any particular class.

And I would think just in the ordinary course of things one of those would probably be a residential representative. I don't know that you have to tag it as such. But it would seem reasonable, given the size of the class, that they would get one of those at-large slots.

**MR. COLEMAN:** Thank you.

**CHAIRMAN ANDERSON:** Thank you, Mr. Florio.

Ms. Susan Mara?

**MR. DAY:** Mr. Chairman, if I could, my name is Michael Day. And I represent the power marketers who filed a Notice of Appearance before you, including that for Ms. Susan Mara.

And the reason we filed the appearance on behalf of her and the other nominees was to provide an opportunity for the Oversight Board to hear from the nominees from the power marketers

if they so chose.

If this isn't the appropriate time, we still do have some preliminary remarks on board composition that we would like to deliver to you today.

We represent a number of power marketers, in fact, we believe the vast majority of power marketers who have actively participated in the wholesale market in California to date and who are planning to participate on a retail marketing basis, including CNG Power Services, Coastal Electric Services, Duke Louis Dreyfus, Electric Clearing House, ENRON, Illanova Energy Partners, National Gas and Electric, New Energy Ventures, Inc., Southern Energy Trading and Marketing Inc. and ZENERGY.

We do not have any dispute at this time with the composition of the boards of the PX and the ISO. We recognize, as Mr. Freeman told you, that's the result of a very delicate compromise between the parties. And we say that, knowing that the power marketers actually have only one seat on the ISO Board and two on the Power Exchange. And we think that that does have implications, however, for the terms of the nominees that we'd like to talk with you about.

We believe that, aside from the investor-owned utilities who have three seats on the ISO Board and the municipal utilities who have four, there's really no other entity who's going to be actually more involved in the day-to-day operations of the ISO

than the power marketers.

And, in point of fact, we have much more impact on the success of direct access, because we will be the ones contacting customers and arranging for direct-access transactions.

And I think we all recognize that direct access is a fundamental element of the overall program of creating a competitive electric energy market.

As a result, we would like to ask that when you look at nominees for the ISO Board and the Power Exchange, on behalf of the marketers, that you do nominate them for terms of at least two years.

And we have a slightly different take on this than has been discussed previously. We would urge that a nominee who sits on the Board throughout the what we might call the creative period of 1997 also be allowed to sit on the Board for the first important year when we actually implement the activities of the ISO, 1998.

We feel, as marketers, that it would be very important for our representative to have had the continuity of seeing the development process go forward in 1997 and participating in it, and then be able to take care of what are obviously going to be some concerns about implementation that come up when we actually turn the switches 1-1-98 and implement the new system.

We think some continuity there, at least for our board

representative, is crucial. And that is why we would ask that the marketer seats be set for at least two years.

And with that, we will conclude our remarks subject to whether or not you would like to hear from any of the nominees that we have represented, all of whom, especially Ms. Mara, who has participated in a lot of the ISO board discussions, would be willing to address if you want to know any more about their qualifications.

**CHAIRMAN ANDERSON:** Thank you for those comments.  
Any questions? Thank you.

Charles McCarthy?

**MR. DAY:** Yes. Mr. Chairman, Mr. McCarthy and Mr. Davis were similarly nominated by the power marketers, so the same applies. Unless you wish to hear about their qualifications, we can pass.

**CHAIRMAN ANDERSON:** Okay.

**MR. DAY:** Thank you.

**CHAIRMAN ANDERSON:** Mr. Mark Davis.

**MR. PUGH:** He's the same one with McCarthy.

**CHAIRMAN ANDERSON:** Ron Nunnally?

**MR. NUNNALLY:** Mr. Chairman, I'm Ron Nunnally,  
Southern California Edison Company.

And I'd just briefly like to say that we also have actively participated in the consensus-building process that the

trustee referred to earlier today. And we fully support the recommendation that he's put forward to you today in terms of the composition of the governing board, both for the ISO and the PX.

I don't have any further comment at this point.

**CHAIRMAN ANDERSON:** Questions?

Thank you, Mr. Nunnally.

**MR. NUNNALLY:** Thank you.

**CHAIRMAN ANDERSON:** Ms. Karen Norene Mills.

**MS. MILLS:** Yes. Karen Mills on behalf of the California Farm Bureau Federation. At the risk of being too succinct, I could say that we would echo what's been said previously.

And, as my letter indicated that I filed with you, we're in support of the composition for the governing board that's been worked out amongst the parties and would encourage your consideration of the process and the self-selection, particularly by the end users that we're concerned about, in choosing members for those boards.

Thank you.

**CHAIRMAN ANDERSON:** Thank you. Any questions?

Lloyd Harvego, Mr. Lloyd Harvego. Did I pronounce that right?

**MR. CRUZ:** Well, actually he's my boss. It's Lloyd Harvego. My name is Maury Cruz, Mr. Chairman. I'm pleased to be

here. I'm with the Transmission Agency of Northern California.

In the interest of being succinct we, too, would support the governing board proposal that was described to why you earlier.

Mr. John McGuire, who's back in the audience, is our nominee for what we call TANC. And I think several of you on the Board are probably familiar with Mr. McGuire. We think he would be an excellent representative for your consideration.

And that concludes my remarks. Thank you, sir.

**CHAIRMAN ANDERSON:** Any questions? Thank you. Thank you very much.

Mr. Keith McCrea. He's not here?

He represents the California Manufacturers Association. Are there any representatives of the California Manufacturers Association?

**MS. KEHREIN:** I will.

**CHAIRMAN ANDERSON:** Okay.

**MS. KEHREIN:** My name is Carolyn Kehrein, and I also represent the California Manufacturers Association. I think Keith, like many other people, had a placeholder in here, depending on what you are going to discuss.

But to be even more succinct than Karen Mills, -- Karen pretty much hit it on the head -- CMA does not at the moment have a -- they are on the steering committee which provides technical



advice, but not on the trust, which does the financial decisions. But a lot of good work has gone on. We've had an opportunity to input into the process.

And we'd ask that you honor the compromise that they've worked out on composition, and how -- especially like Karen said, for end users to self-select.

Thank you.

**CHAIRMAN ANDERSON:** Okay. Thank you, thank you.

Ms. Dana Appling.

**MR. BRAUN:** My name is Tony Braun. I'm Ms. Appling's general counsel at the Sacramento Municipal Utility District.

And, as has been stated earlier, I put a placeholder in pending the outcome of the Agenda.

SMUD fully supports the board composition proposal which was appended for your ease of reference to this CMUA, Notice of Appearance and comments.

And Mr. Richard Ferrera [phonetic], Assistant General Manager, has been put forth for your consideration. And we look forward to moving forth with the process.

Thank you.

**CHAIRMAN ANDERSON:** Thank you.

Mr. James Feider.

**MR. FEIDER:** Thank you, Mr. Chairman and Board Members. My name is James Feider. I'm the Regional Manager for

the Western Area Power Administration here in Folsom, California.

Western is a federal agency, a power marketing agency, a division of the Department of Energy. And we have significant facilities in Northern and Central California. We have transmission assets that include portions of the intertie facilities to the Pacific Northwest as well as high-voltage facilities that serve several customers.

We have a variety of customers in the State of California including municipalities, irrigation districts, federal installations, and so forth.

Western has been participating in the WEPEX process. And to make my remarks short as possible, we support the proposal that's been developed by the WEPEX process. It provides a governmental entity class that includes four entities at this point, in addition to Western Area Power Administration, the California Department of Water Resources, the City and County of San Francisco, as well as the Metropolitan Water District.

This class provides the avenue for Western to join the board on the ISO, if we should join the ISO. And we just want to indicate our support for that.

While I have this chance, I would like to reinforce the need that this -- particularly the ISO Board to reinforce the reliability aspects as provided in the AB 1890.

We raised a variety of concerns in the Phase 1 filing

regarding your liability. We think the parties have come a long ways towards satisfying those concerns. We hope that the ultimate FERC ruling on these filings will allow Western to join and be a full participant in the ISO.

Thank you.

**CHAIRMAN ANDERSON:** Any questions? Thank you.

Mr. Gary Ackerman.

**MR. ACKERMAN:** Thank you, Mr. Chairman. My name is Gary Ackerman. I represent Mock Energy Services. And we are a direct-access provider of natural gas and soon electricity in the State of California on a retail basis.

My comments I will limit to the composition of the board. And we support the previous comments you've heard and that is having been the sole representative of the class known as the private seller and buyer, which is another word for power marketer.

And I've been serving on that in the Power Exchange. I watched this group work together and run up that hill a couple of times, more than I think three, to reach a compromise. And it was an amazing achievement to see that this group, once again, was able to come together and put aside some differences and come together with a composition, which I think should carry some merit.

We would endorse terms, at least initial terms, of two

years. I would encourage the consideration of Mr. Freeman's proposal, whereby in the first year we might have a board that's more heavily weighed with members of the trust advisory committees. After all, they bring a lot of knowledge and experience and working together as a team. So I think that has some value. And starting on 1-1-98, a two-year term would make some sense.

We'll withhold any comments about nomination and self-selection process for another meeting if that's okay.

**CHAIRMAN ANDERSON:** Any questions? Thank you.

Mr. Stephen Kashiwada.

**MR. WARNER:** My name is Michael Warner. I'm with the California Department of Water Resources. Stephen Kashiwada is Deputy Director with the Department.

The only statement we make is that we support the trustee's recommendations.

**CHAIRMAN ANDERSON:** Thank you.

Mr. Lawrence Klein.

**MS. SOLÉ:** Hello. My name is Jeanne Sole. I work with Diane Brunig [phonetic] representing the City and County of San Francisco. We are a member of the Governmental Entities Board.

I'd like to bring your attention to the comments filed by the Governmental Entities on March 6th. And in it we indicate

that we support the WEPEX proposal. And we nominate Mr. Bejiu Patel [phonetic] to represent the Governmental Entities.

Thank you.

**CHAIRMAN ANDERSON:** Thank you.

Mr. Duane Georgeson.

**MR. SCHEMPP:** My name is Bob Schempp. I'm with the Metropolitan Water District. And Duane wasn't able to be here today.

But we do support the proposal that's before you with the trustee. We are one of the representatives with the Governmental Entities.

**CHAIRMAN ANDERSON:** All right, thank you.

Mr. Michael Day.

**MR. DAY:** Mr. Chairman, we already made our presentation as part of the power --

**CHAIRMAN ANDERSON:** Oh, okay, all right.

**MR. DAY:** -- marketers group.

**CHAIRMAN ANDERSON:** He was part of that group.

Okay. Anybody else want to make a public comment?

**MR. COLEMAN:** See if there's anybody in the room that does not support the proposal.

[Laughter.]

**MR. COLEMAN:** Just out of curiosity.

**MR. PUGH:** I want a negative vote.

**CHAIRMAN ANDERSON:** Yes. Mr. Freeman suggested that we entertain an opposition.

Does anybody have a contrary opinion in the audience?

[No response.]

**ASSEMBLYWOMAN MARTINEZ:** I guess the only contrary opinions that we actually received were those who thought they ought to have greater representation, including the residential class.

**CHAIRMAN ANDERSON:** Yes. Okay.

**MR. COLEMAN:** Seriously, there's no objection to the recommendations that came from Mr. Freeman at all?

[No response.]

**MR. COLEMAN:** There's nothing that this group should know concerning those, other than the fact that it is obviously a delicate compromise, --

**MR. PUGH:** I think there was --

**MR. COLEMAN:** -- hard fought, --

**MR. PUGH:** -- there was too much --

**MR. COLEMAN:** -- that we put together.

**MR. PUGH:** -- too much blood on the carpet to come back here.

**MR. COLEMAN:** Well, it's been a pleasure being a member of this committee.

[Laughter.]

**MR. PUGH:** Really. Our job is short-lived.

**MR. DAY:** Mr. Chairman, I do have one question for clarification.

**CHAIRMAN ANDERSON:** Yes.

**MR. DAY:** And this is not by way of opposition to Mr. Freeman saying -- this is Michael Day again for the power marketers.

As I understood his recommendation about proceeding with the temporary situation, or at least in the initial phase, including members of the TAC on the governing boards, we certainly can't dispute the fact that there's a lot of expertise that has to be considered there. I think he also said that you should respect some of the self-selection nominations of the parties.

But I certainly understood that the recommendation that's being put forward to you was to appoint a permanent board along the lines of what's proposed in the Bylaws that have been drafted by the ISO and the PX.

If there's to be some sort of a temporary smaller board, based on the number of parties in the TAC, that's not something we would support.

We would support going ahead with something that meets the full-sized board contemplated in the Bylaws. And if Mr. Freeman meant that, then we certainly support that.

But I thought for clarification I ought to indicate that

we think the way to go forward is with the full-scale proposal for the board as contemplated in the Bylaws for both the PX and the Power Exchange.

Thank you.

**CHAIRMAN ANDERSON:** Well, we've got various opinions as to the constitution of that board. How about having a Board discussion on that right now. Mr. Coleman?

**MR. COLEMAN:** It seems to me that there are a couple of things that we probably ought to, at least as a Board, discuss.

One is this issue of self-selection by the various interest groups and whether or not that is the appropriate and most efficient way to go about it.

Two, is whether or not the groups do represent appropriately the stakeholders.

And I think we also probably need to look, at least briefly, some of the government's issues to make some determinations as to whether or not a board like this could function. Because clearly there's a tension between adequate representation of everybody and the ability to make decisions in a commercial and a timely manner.

So somehow I guess I'd like to figure out how to have a brief discussion on that. I'm not quite sure how to order it. I'm clearly pleased to hear that a compromise has been struck. Again I do think it's important to respect that. And it is my



understanding that the compromise struck is that the board should represent the stakeholders in the proportions recommended. That if we decide to appoint a temporary board, or a board with a short-term membership, that we do it within the guidelines of the representations by the stakeholders and that generally beyond that board terms of two years or so are appropriate.

**MR. PUGH:** That's right.

**CHAIRMAN ANDERSON:** Yes.

**MR. COLEMAN:** But I think that's sort of what's on my mind.

**CHAIRMAN ANDERSON:** Archer.

**MR. PUGH:** My comments are basically I don't see any pressing need to put in a temporary board. If the trustee can proceed with the filing, and that's not going to jeopardize the FERC jurisdictional questions that I raised, then I don't see we need a temporary board. We have time, and adequate time, to adopt a board and adopt the compositions.

I would like to, having just received the Bylaws this morning, not having had a chance to review how they came up with their criteria, the selection process, I'd like to have an opportunity to review that before we get into the process of actually adopting something with regard to the criteria, both as to the composition and as to the selection process.

I can say, having been through some previous

negotiations with regard to the electrical industry, I'm very and amazed, very honestly, to see how they have come to this point. As Mr. Freeman said it was a lot of hard work. And I'm sure, as the trustee of the matter, he had a lot to do with the direction and sort of feeding the people together and making them work together. That's what it takes to make one of those things work.

But I would like to have an opportunity to at least, with a fresh eye, take a look at it and review it before we make any decisions on it.

**CHAIRMAN ANDERSON:** Assemblywoman Martinez?

**ASSEMBLYWOMAN MARTINEZ:** Thank you. It was my understanding that initially there was a proposal to put in a temporary board, which pretty much looked like the TAC, only for deadlines. And that was not something that I was wholly supportive because I think the initial proposal was to do that for one year.

**CHAIRMAN ANDERSON:** Yes.

**ASSEMBLYWOMAN MARTINEZ:** And that's why I would like to have seen it done in 90 days. If the Board however, the Oversight Board, decides that we ought to just move into --

**CHAIRMAN ANDERSON:** A permanent board.

**ASSEMBLYWOMAN MARTINEZ:** -- creating a permanent structure, I certainly wouldn't have any problems with that. I would think that what we would do in conjunction with that is

immediately file with FERC our plans to do just that to keep their spot open at the table, if you will, for the filing and to ask FERC to allow the ISO, once it is completely appointed, to file. I think that would be important.

In addition to that, I do think that the residential class needs to be, as I look at all of the people that, or the classes that are available and the appointees to those classes, we have upwards of five and four people representing individual classes and yet your residential was held at, you know, a fairly low number. I think that we ought to take serious thought about increasing the residential class. I don't think that would hurt us at all.

**CHAIRMAN ANDERSON:** Increasing it to what number?

**ASSEMBLYWOMAN MARTINEZ:** I think probably as large as the largest class represented. If you look at -- we are all residential users. I would think that we would want to have at least representation as high as the largest class represented.

**CHAIRMAN ANDERSON:** Would you take them out of the at-large group?

**ASSEMBLYWOMAN MARTINEZ:** I don't know. I didn't really think that out yet.

**CHAIRMAN ANDERSON:** Yes. Okay, all right.

Mr. Rozsa.

**MR. ROZSA:** Thank you, Mr. Anderson.

I see that there are four issues here. One is the composition of the Board, one is the terms of the Board, another is the manner of selection of the Board, and then the issue of whether or not to have a short-term board.

It seems reasonable to take a look at the composition that's been proposed and honor it once we're comfortable with that. As to the terms it seems like -- I don't remember whether there's been -- correct me if I'm wrong. I don't believe that the terms have been discussed here except in the testimony of a few witnesses as to various terms.

The manner of selection: The self-selection mode runs contrary to AB 1890's provisions which provides for the Oversight Board to make all selections. And we need to deal with that particular issue.

**CHAIRMAN ANDERSON:** What are you suggesting as to terms?

**MR. ROZSA:** Actually I'm not familiar with what the trustee's proposal is on this.

**CHAIRMAN ANDERSON:** Two years.

**MR. ROZSA:** Is it two years?

**MR. FREEMAN:** I don't know that we made a specific number of years, that we just advanced the thought that the group that's there, that served usefully during this interim period, and that --

**MR. ROZSA:** All right. So you haven't addressed that issue?

**MR. FREEMAN:** Well, we really didn't come down on the term.

**MR. ROZSA:** I think Mr. Day's remarks about continuity have some merit. And a minimum of two years certainly would be important. And I'd be open to more than two actually.

As far as the short-term board, I don't think that we need to take that up right now.

**MR. SALTMARSH:** I believe that the current state of the Bylaws' proposal would have three-year terms for governors as staggered terms.

**ASSEMBLYWOMAN MARTINEZ:** Do we really want to turn over the entire board at one time?

**MR. PUGH:** No.

**MR. COLEMAN:** Staggered.

**MR. PUGH:** Staggered.

**CHAIRMAN ANDERSON:** Staggered.

**MR. ROZSA:** Right, staggered terms.

**ASSEMBLYWOMAN MARTINEZ:** They'd be staggered, right?

**MR. PUGH:** Yeah.

**ASSEMBLYWOMAN MARTINEZ:** But staggered through a three year -- to a three year proposal would be --

**MR. COLEMAN:** We'd probably have to start with the

initial board being appointed for terms of one, two and three years, I'd suggest.

**ASSEMBLYWOMAN MARTINEZ:** Right.

**CHAIRMAN ANDERSON:** Yeah.

**MR. COLEMAN:** Turn over a third of the board each time.

**CHAIRMAN ANDERSON:** Should we issue a directive to the staff and the parties involved that we direct the staff to issue an order for the parties to file names of nominees by March 21st?

**MR. PUGH:** Well, we can't very well do nominees until we determine what classes we're going to use, and whether we accept the classes, as designated by the filings, as of right now.

**CHAIRMAN ANDERSON:** All right.

**ASSEMBLYWOMAN MARTINEZ:** But actually they could if they prioritize their nominees. So understanding that they may or may not -- oh, I see under what classes, you're saying.

**MR. PUGH:** Yes. But if you don't have the --

**ASSEMBLYWOMAN MARTINEZ:** My guess is they have a pretty good feel for who they would nominate under, you know, a number of different scenarios and classes. I mean, I don't know that that would be onerous for them.

I'm sure that all the parties have given that considerable thought. So they might be able to do it under a

number of different scenarios and then prioritize.

**MR. PUGH:** They could probably give us the names of the people that they would nominate to be on the ISO and the PX, identifying with those names, the particular background they have, the agencies they represent, the areas in which they are.

And then if we adopt that classifications, then we merely fit them in the slots. If we change the classifications, they may drop in some other slots.

**ASSEMBLYWOMAN MARTINEZ:** It might make sense to do that just so that we start to digest that information

**MR. PUGH:** Yes, it's probably a good idea.

**CHAIRMAN ANDERSON:** Well, let's take up the composition and classifications.

**MR. PUGH:** Well, Mr. Chairman, I'm not sure I'm ready to discuss the composition until I read the Bylaws carefully as to how they are adapted to that particular class.

I mean you've got a composition to chart, which identifies certain categories.

**CHAIRMAN ANDERSON:** Yes.

**MR. PUGH:** But the Bylaws are going to flush out what those categories mean with regard to who they are. And I think that, you know, that's going -- if you dovetail the two together, you're going to find out whether or not you feel that you've adequately covered all the people that are there in the right

proportion. I'm not sure we can, you know, address that issue directly without dovetailing into the Bylaws.

**MR. ROZSA:** Mr. Chairman?

**CHAIRMAN ANDERSON:** Yes.

**MR. ROZSA:** Would it be appropriate to put off the consideration of the structure of the composition until our next meeting, but direct parties to go ahead and make nominations --

**CHAIRMAN ANDERSON:** Yes.

**MR. ROZSA:** -- on the --

**CHAIRMAN ANDERSON:** Yes.

**MR. ROZSA:** -- expectation that this might be the likely structure?

**ASSEMBLYWOMAN MARTINEZ:** It won't vary much from it anyway.

**MR. PUGH:** No. I know I don't think it will. I'm not sure it will at all, but I want to have an opportunity to take a look at it. And we're meeting again on the 19th, which is only, you know, five days away.

So if we put those two factors off and have the nominations in from the different areas as to who they think ought to fit those slots, then we should be able to cover a lot of ground at one time.

**CHAIRMAN ANDERSON:** Well, would it impose a hardship to require the nominees to be placed in nomination by the 19th?



**MR. PUGH:** Has anybody in the audience got a problem with that?

[No response.]

**MR. PUGH:** I don't see anybody screaming.

**CHAIRMAN ANDERSON:** At which time we'll have a chance to review the Bylaws. Both Mr. Coleman and Mr. Pugh have alluded to that review.

And so I would suggest for consideration that we have the various entities place in nomination, by the 19th, their nominees, and that we meet on the 19th to consider the classes.

And then on the 27th we consider the nominees, including Mr. Freeman's suggestion. Okay? All right.

**MR. SALTMARSH:** Mr. Chairman, if the Board is disposed to direct an order soliciting nominees, based on what we have anticipated, you may want at the time you're considering actual nominations, I would suggest, so that it be a one-step process related to these names, that the order ask the nominating party to explain both the selection mechanism that resulted in the nominee, so that you can see the extent to which it's consistent with or analogous to those proposed for broad-class participation, that it has the endorsement of a class. And also that the order direct that, for nominees presented, there be some description of the qualification or experience of those --

**CHAIRMAN ANDERSON:** Yeah, yeah.

**MR. SALTMARSH:** -- nominees which I had anticipated you would probably be looking at in terms of ratifying those people once the nominations come forward.

**MR. PUGH:** I was going to go a little further, Eric, because I would also like not only that but the background with regard to the entity to which they belong or a party to, as to what type of an entity it is, what connections it may have to other entities, if it's a subsidiary, if it's an arm of, or something of that vein, so we know where the loop is as to what that person's representing in the full picture.

**ASSEMBLYWOMAN MARTINEZ:** It's a good idea.

**MR. SALTMARSH:** Are you referring to the direct connection that individual has with a market participant or --

**MR. PUGH:** Well, they're obviously going -- most often they're a consultant or they're working for an entity, and that entity may be an arm of another entity.

**MR. SALTMARSH:** Okay.

**MR. PUGH:** And I think we need to know that.

**CHAIRMAN ANDERSON:** Okay. Will counsel -- Eric -- restate the requirement?

**MR. PUGH:** We need a formal motion to go through all that, Eric?

**MR. SALTMARSH:** If I understand the motion, as it would be put forward at this point, it would be a motion directing

staff to issue an order from the Board directing parties wishing to make nominations for the eventual governing boards to submit those nominations prior to an upcoming meeting on the 19th.

And that such nominations should identify individuals proposed for appointment to represent classes, the qualifications of those individuals to serve as a governor, a description of the selection mechanism used to identify that individual as appropriate to represent a class, and obviously the class whom that individual would represent, and the nature of any affiliation of that nominee to a participant in the marketplace, including the relationship of that participant to other market entities.

**CHAIRMAN ANDERSON:** So move?

**MR. COLEMAN:** Second.

**CHAIRMAN ANDERSON:** All in favor?

**VOICES IN UNISON:** Aye.

**CHAIRMAN ANDERSON:** So ordered.

**ASSEMBLYWOMAN MARTINEZ:** Mr. Chairman would we also be directing staff to file with FERC and let them know that we would like an opportunity for ISO, once it's appointed, to still be able to file, notwithstanding, its 31st deadline and explain what our -- where we are in this process to FERC so that they allow -- keep the door open for the ISO?

**MR. PUGH:** That's assuming we wouldn't be able to make a May 15 deadline filing?

**ASSEMBLYWOMAN MARTINEZ:** Well, the first deadline is the 31st.

**MR. PUGH:** Well, I understand, but you get a response that could be done by May 15; is that right, Mr. Freeman?

[No audible response.]

**MR. PUGH:** And if the trustee is filing in the name of the ISO, then the formulated ISO would have an opportunity to respond at that point.

**ASSEMBLYWOMAN MARTINEZ:** Why would we have the trustee file in the name of the ISO if we know we're going to have an ISO? Wouldn't it be more appropriate --

**MR. PUGH:** Well, because we have to make the 31st. We're not going to have an ISO by then.

**ASSEMBLYWOMAN MARTINEZ:** Well, that's why the letter. The letter would lead and tell the FERC that we are in the process of appointing the ISO and would like that door left open for them. I believe the order contemplated that ISO would be a separate body --

**MR. PUGH:** Yes, well it has -- well --

**ASSEMBLYWOMAN MARTINEZ:** -- from the trustee.

**MR. PUGH:** Right. But I'm looking --

**ASSEMBLYWOMAN MARTINEZ:** And therefore --

**MR. PUGH:** It has its right. To me it still has the right by May 15 to make the filing as the ISO.

**ASSEMBLYWOMAN MARTINEZ:** Maybe counsel can help us on that.

**MR. SALTMARSH:** Under my understanding of the FERC procedures, once the filings go in on March 31st, by the parties, there will be a broad right of interested entities to comment. That would be over a one-month period. And then there would be a shorter one-half-month period for responses to those comments.

If I understood what Mr. Freeman said was an option, if I understood that correctly, it would be that should the trust file, as a proxy to the ISO at this time. Then in that response period, in the first half of May, the ISO and PX could be the entities who respond to comments on the trust proxy filing.

I do not think it would be a problem to preserve actual party status for the ISO and PX to be in that position. But there might be a mechanical process of ensuring that such that party status was formally achieved by the ISO and PX, during the intervention period, which runs through into April. I think that could be accomplished either by the trust or some other way.

I think it's fair to say that FERC has expressed a very strong desire to have the ISO and PX be parties. So I think any solicitation of party status for them would probably be treated favorably.

**MR. PUGH:** I guess my concern on -- and I know where you're coming from. And I was trying to figure out how to get

there. But my concern would be that if we write to FERC and indicate that we are in the formation process of the ISO, and they may be making an additional filing on behalf of the ISO, as an initial filing, not as a response, that that could mean FERC then won't take the trustee's filing as an active filing, --

**MR. SALTMARSH:** Yes, yes.

**MR. PUGH:** -- will delay that until we get our filing in, which means FERC does then allow us a response period after that second filing goes in, which blows the 1-1-98 deadline. There's no way you're going to get through FERC by then.

**ASSEMBLYWOMAN MARTINEZ:** So if we allow the trustee to do that, we would still write to FERC trying to create party status for the ISO to make sure that they have party status after that filing deadline. And that would be --

**MR. PUGH:** I think we can do that.

**ASSEMBLYWOMAN MARTINEZ:** All right.

**MR. PUGH:** Where we can enter a filing at the same time as the trustee files to maintain party status for the ISO upon formulation.

**ASSEMBLYWOMAN MARTINEZ:** Okay.

**MR. PUGH:** I don't think that -- would that be a problem, Mr. Freeman, that you can see?

**MR. FREEMAN:** I believe that our counsel is perfectly capable of protecting the party status of the ISO and PX. If the

Oversight Board wishes to make some expression of support filings, that would be a different matter, but I don't -- we have very expert counsel retained. And their job is to do just what you suggest, and I --

**ASSEMBLYWOMAN MARTINEZ:** Maybe you can help us find the part in your filing that creates that party status for the ISO and the Power Exchange so that we can feel comfortable that that's accurate.

**MR. FREEMAN:** I think that this is something our counsel could explain to your staff. We can't just --

**ASSEMBLYWOMAN MARTINEZ:** Your counsel -- excuse me, sir --

**MR. FREEMAN:** -- if I might finish. We can't create party status. FERC does that. But we could file the papers and make the State's -- and make the representations --

**MR. PUGH:** Well, could counsel advise us -- I mean, you know what we're trying to do, what the end result is. And we don't want to end up with a filing that's going to delay the initial filing and have FERC say, "Oh, you didn't start until July," and then we're off into the middle of '98 before we can get a FERC decision.

**MR. FREEMAN:** Well, Mr. Chairman, what if we have our counsel supply the Board with a letter in the next few days to explain --

**CHAIRMAN ANDERSON:** Okay.

**MR. FREEMAN:** -- how we're going to work that out.

**CHAIRMAN ANDERSON:** All right.

**MR. PUGH:** That would be fine.

**CHAIRMAN ANDERSON:** Yes. That would be fine.

**MR. PUGH:** Then we can address that again on next Wednesday.

**ASSEMBLYWOMAN MARTINEZ:** The 19th.

**MR. FREEMAN:** Yes. If you don't like it then you can do something -

**MR. PUGH:** We can address it on the 19th and clear that up.

**ASSEMBLYWOMAN MARTINEZ:** Right, if we can get that information before then, and that's what we'll be addressing.

**MR. ROZSA:** Mr. Freeman, will your filing on the 31st be making representations about the Oversight Board?

**MR. FREEMAN:** I'm trying to think. Indirectly, to the extent that we will be filing an argument advocating that FERC reverse itself and acquiesce in the state law. If we will be making an argument that you and I have discussed, that would -- not on behalf of the Oversight Board, but making the argument ourselves both on behalf of what's right.

I mean we can -- I want to be sure I answer your question accurately. The technical answer is no. But we will, in



effect, be making an argument it is our responsibility under state law to seek that FERC reverse itself and grant the state law on residency requirements and in terms of the continuing role of the Oversight Board.

**MR. ROZSA:** Would you think it appropriate for representations about the Oversight Board's function to be made by the Oversight Board itself?

**MR. FREEMAN:** If the Oversight Board wishes to make a filing on that subject, obviously it's free to do so. And perhaps it would relieve me of the responsibility of doing it. I think that we're trying to make the most persuasive argument that we can. If there are better arguments, quite frankly, just a purely legal tactical point of view, they might come better from me in terms of persuading FERC, because you're the object of their affection, or disaffection. And I'm trying to persuade them otherwise. But it's entirely up to this Board. I'm just trying to win this case.

**MR. PUGH:** Well, I think that your filing has to include that provision, or should include that provision in it to establish the law, as it was passed in California, and try to enforce that provisions of legislation to support the Oversight Board.

What we could possibly do beyond that point would be in the response period the Oversight Board prepare its own response

in support of that position, flushing out the program that you have.

So if we could get supplied the information that you're going to use in your arguments on the filing, it would probably help this Board to be able to respond to that and put in our own response to try to tell them we think we ought to be here longer than you think we ought to be here.

**MR. FREEMAN:** That would be excellent. That would be excellent.

**MR. COLEMAN:** So can that be a subject of the next meeting?

**MR. PUGH:** Yeah. If we can get -- we get the information, can't we, Mr. Freeman, pretty quickly as to what your arguments will be so we know how to flush them out from our standpoint?

**CHAIRMAN ANDERSON:** Mr. Freeman, would your counsel give to Eric -- coordinate with our counsel?

**MR. FREEMAN:** Yes, sir.

**CHAIRMAN ANDERSON:** Okay.

**MR. COLEMAN:** And I guess that at issue is not only the residency requirements but what role the Oversight Board has in the future, not only for election or appointment or otherwise of governors, but any other issue.

**MR. FREEMAN:** Yes, sir.

**MR. COLEMAN:** I mean our --

**MR. FREEMAN:** Yes, sir. We go with the -- we have researched this and we believe that the issue of reliability is essentially the State of California's issue. And it's entirely appropriate for the State of California to have an Oversight Board over this new ISO. It's not even in business yet. And to be sure that it carries out its job for the issue of reliability, which is of overriding importance.

And if we make -- we intend to make that argument very forcibly and very thoroughly. And I don't think that FERC really thought this through in its prior decision. Also there are other arguments that we will make.

It's relevant to enabling the municipal systems to get a favorable tax ruling so that they can turn their lines over to the ISO and maintain their tax debits. Because, if you have oversight over the ISO, that confers a governmental aura on the ISO that it wouldn't otherwise have and facilitates an IRS ruling. So we have a whole series of arguments that I don't think FERC previously considered.

**ASSEMBLYWOMAN MARTINEZ:** With regard to preserving the party's participation in front of FERC, is it my understanding that you'll make the specific language available to this Oversight Board in terms of how you're going to do that? I'd like to see the language that you're going to be proposing that preserves the

party.

**MR. FREEMAN:** We are going to work with your counsel and we're going to supply the letter from our counsel to explain how we're going to do it. I don't try to tell the lawyers exactly what to write.

**ASSEMBLYWOMAN MARTINEZ:** That's not what I'm asking you to do, sir. I'm asking if you're going to provide the verbiage that you will be using in that process. That's all that I'm asking for. And if your staff can make that available to me, that would work fine -- and the rest of the Board members, as well.

**MR. FREEMAN:** Everything we have is available to you. So exactly how the counsel is going to go about doing that, I really don't know right now. Whether they're going to recommend including it in our filing, whether that's necessary. But we will discuss this with counsel, and we will provide you a letter early next week.

**ASSEMBLYWOMAN MARTINEZ:** Thank you.

**CHAIRMAN ANDERSON:** Is there any more business to come before the Board?

**DR. ROMERO:** Mr. Chairman, I'd just like to address one question to staff that you can answer now or at the next meeting. But I think, pertinent to this possible new filing deadline on May 15th, a responsive deadline, if the governing

boards were to file responses by May 15th, obviously substantial, less extensive than the March 31st filing, do you have a sense of by what date they would need to be appointed? Is it two weeks before, four weeks before? And I guess both a legal and then a practical aspect to that.

**MR. SALTMARSH:** I'm not sure that we're in a better position to answer that than would be anyone else in attendance today.

As a practical matter, to have the greatest participatory ability, the governing boards would want to be able to not only review all of the filings that were made on their behalf, to comment on any adjusted positions they might have, or to endorse all those positions, but also to respond to any comments that have come in on those filings.

Those are awfully extensive filings. And I would hate to pick a date, but would only say the earlier the better. I would hate to have less than a number of weeks to review those materials and draft a responsive filing myself.

**MR. PUGH:** Well, I'd think --

**MR. FREEMAN:** Dr. Romero, if I could add my endorsement to that response. While it's technically, in my view, not necessary that the boards be in place on March 31st, they could hardly persuade FERC that they had reviewed the filing if they were in place even today.

But I think it's extremely important that they be in place the earliest possible day in April. Because, in order to ratify these filings and get some real input that will be persuasive to FERC, they're going to need four or five weeks.

**DR. ROMERO:** I think, furthermore, I think that's sort of a subtext behind your recommendation of a temporary board with membership from your existing first-year advisory counsel.

**MR. FREEMAN:** Yes, it will be very helpful if a majority of the board that has already done that massive amount of work. And I think, if I might say so, persuasive to FERC that the filing was, indeed, the product of the board, albeit somewhat retroactive.

**MR. PUGH:** I just don't follow that line myself because I believe that if you do that you've taken the trustee and the TAC committees, then you've adopt and say, well, now we'll adopt them as the ISO board and that board will adopt what the trustee and the TAC did. And then we're going to get a whole brand new board that's now stuck with that, without having had the input or any say on that. If you have just a temporary board, then supply a new one. I don't see any reason we can't have a new board in place by the first week of April.

**CHAIRMAN ANDERSON:** Yes.

**MR. PUGH:** And the filing is on the 31st of March. You're not going to get responses for a good ten days, two weeks.

So your responses will come in. They have to be responded to by May 15. You're going to have your board in place.

And I think, very honestly, you'll still have a good percentage of that board, if not -- although it's going to be from out of the TAC people and those that have been there all the time anyway.

So you're going to have the people to be able to do it. But now you have a fresh board that is the board that can ratify and will have some validity to that ratification for the three-year term they're going to be on the -- doing their job.

**ASSEMBLYWOMAN MARTINEZ:** I agree.

**MR. FREEMAN:** And so essentially it's an academic argument because, as you say, the answer, the back of the book, is that these folks are going nominate many of the same people that are already there. And they're good people, and I believe they'll survive the scrutiny of the Oversight Board.

**CHAIRMAN ANDERSON:** Okay.

**MR. HEATH:** Just one thing.

**CHAIRMAN ANDERSON:** Yeah.

**MR. HEATH:** Mr. Chairman, just a request of the trustee is that we certainly want to make sure you have your best people here at the hearing on the 19th, for questions from the Board related to the Bylaws and Articles of Incorporation?

**MR. FREEMAN:** Sir, we have nothing but the best

people.

**MR. HEATH:** Thanks very much, Mr. Freeman.

Thank you, Mr. Chairman.

**MR. FREEMAN:** Okay. Any further business to come before the Board?

**MR. COLEMAN:** No. I just have I guess one thought as we sort of begin to think about the next meeting.

It seems to me that if we adopt the Bylaws and appoint a temporary board that, at least at the moment, that's the end of the duties for this particular commission. Because the Bylaws will provide for continuing election of the ongoing board. I think the Bylaws provide for this group to appoint the initial board and that only. So we cannot seem to get away from this notion of what our duties are.

**MR. PUGH:** Well, I don't think --

**MR. COLEMAN:** And somehow, somehow --

**MR. PUGH:** -- I don't think we adopt the Bylaws though. That's what's happening.

**MR. COLEMAN:** I mean it is a Catch-22.

**MR. PUGH:** We adopt a composition of the board which will be reflected in the Bylaws which the ISO, on the Articles, will adopt. And we will appoint the initial board. And then I think the board will adopt the Bylaws as they've been submitted.

But we have to adopt the composition which will be that



portion of the Bylaws which relates the nature of the board and the selection process and those kinds of things. So --

**MR. COLEMAN:** Yes. But I mean the point is is that as an ongoing company they --

**MR. PUGH:** Oh, once we've done that --

**MR. COLEMAN:** Once we've done that they're --

**MR. PUGH:** -- we're out of business.

**MR. COLEMAN:** -- we're out of business, and they're off and running. And --

**MR. PUGH:** Yes and no.

**MR. COLEMAN:** -- I'm not sure. I mean it seems to me that we still have this sort of notion of what this Board is supposed to do and isn't supposed to do. We have conflicts between FERC and the enabling legislation.

**ASSEMBLYWOMAN MARTINEZ:** Well, when we drafted the legislation we did envision that the Oversight Board would be an ongoing function. In that above and beyond just voting for appointees that the Oversight Board would then also concern itself somewhat with disputes or appeals that were not handled, you know, the other issues that were not resolved in front of the ISO. So there would be a continuing governance role for this Board. And that was exactly what was envisioned by 1890.

So I think that Archer's probably right. And we review the Bylaws. But to the extent that they run afoul of legislative

intent in 1890, we don't necessarily adopt them all, either.

**MR. COLEMAN:** Yes. But wait a sec. I have yet to hear that it is the duties of this Board to adopt the Bylaws.

**MR. PUGH:** No.

**MR. COLEMAN:** So if all -- I mean the one thing I do think that there is no objection upon at the moment, other than the residency requirement from FERC, is that we can appoint the initial board, not the next board, not the following board, not any changes in membership in the board, not any changes in the Bylaws, just the initial --

**ASSEMBLYWOMAN MARTINEZ:** It was our intent in 1890 that the Oversight Board continue to appoint or reappoint as vacancies with -- we knew that there would be some shifts that would happen. Some groups would disappear, or they would need greater membership. And we knew that as that happened the Oversight Board would continue to look at balancing the ISO board and to appointing or reappointing in cases of vacancies.

And we did envision that, in fact, if there were some issues that could not be handled by the ISO, notwithstanding the Bylaws that are being adopted, that those issues also would come before the Oversight Board. We didn't see a full-functioning board, and we didn't see an end to it, once the ISO was created.

**MR. COLEMAN:** Okay. I guess it would be -- it might be helpful to me, and I don't know if it would be for other Board

members if we could get your able counsel, Mr. Freeman, to point out to us where the Bylaws are in conflict with AB 1890.

**MR. PUGH:** I don't think they are.

**ASSEMBLYWOMAN MARTINEZ:** Well, they don't think they are.

**MR. PUGH:** I don't think they are at this stage.

**MR. COLEMAN:** Okay. If they're not, that's fine with me.

**ASSEMBLYWOMAN MARTINEZ:** But the issue that is --

**MR. PUGH:** I think the --

**ASSEMBLYWOMAN MARTINEZ:** -- different from that is whether or not --

**MR. COLEMAN:** But I do not believe those Bylaws provide for this Board to appoint subsequent governors, for instance.

**MR. PUGH:** They may not, but what there is though and what --

**ASSEMBLYWOMAN MARTINEZ:** If they don't, then they would be running afoul of what we intended in 1890.

**MR. PUGH:** Yes, right. There's another area which I haven't read the bylaws, and that's why I got it. It's what you have to go through, and that's the area --

**MR. COLEMAN:** I just read one page. That's my problem.

**ASSEMBLYWOMAN MARTINEZ:** I'm with Archer. We're going to do our study session.

**MR. PUGH:** Well, the area composition, because I would say that if time progresses and it's determined that the composition doesn't work and some areas drop out or don't fulfill, that this body is the body that can modify or change the composition of the members of the board. And that we don't shift that duty off to the ISO or to the PX. I think that obligation remains with this body as to what is the composition of that board and how it's composed and the classes therein.

**MR. COLEMAN:** Okay. I mean I think to the extent that the Bylaws may be in conflict with that, somebody needs to explain to us why or what we ought to do about it or what the recommendation is.

**CHAIRMAN ANDERSON:** Mr. Freeman?

**MR. FREEMAN:** Perhaps this would be helpful, Mr. Coleman. I understand your dilemma. But it strikes me that if you appoint the initial -- decide on the composition and appoint the initial board members, that during 1997 these entities are not in business yet.

There will be no appeals or anything. The real work that's contemplated for the Oversight Board begins only January 1, 1998. And by then this business of what the law really is, what FERC approves or disapproves will be decided.

FERC will review our filings during '97, before January 1. And that's part of the reason why I thought an appointment of board members for the rest of '97 would be appropriate. Because, by January 1, this Oversight Board hopefully will have the clear authority to have a continuing role. And what role you have in reappointments will be clarified. And that was just the symmetry of the thought. Because there will be no issues in '97 coming up in terms of appeals or rates or things like that, because they're not in business yet.

**ASSEMBLYWOMAN MARTINEZ:** Well, we don't actually know what's going to happen. But I think I do know that, with regard to FERC and FERC's opinions, there are lawyers, really good lawyers, who disagree about whether or not, you know, what FERC's jurisdiction is here in California, as it relates to the work that we did in 1890.

And, you know, part of the work of this Board ought to be to continue to advocate for those things that we've set forward in 1890, including the rights that were created for this Board under 1890.

So I don't think that there will -- I think there will be plenty to do. And I think that there will be plenty for us to do with regard to our interaction with FERC.

So I don't believe we appoint the ISO and then become dormant until a later period. I think counsel might know that

there are some differences between our interpretation of how we form 1890 and FERC's, if we have jurisdiction.

**MR. SALTMARSH:** Without going into a lengthy jurisdictional argument as to trying to opine on how well reasoned the FERC opinion was on the extent of the preemption of the Federal Power Act, AB 1890 provisions related to the Oversight Board gives the Oversight Board three, and by implication, and perhaps as many as five ongoing roles.

The first of those is to oversee the operations of the ISO and the Power Exchange. That role, Subsection (a) of Section 335 of the Public Utilities Code, was completely unaddressed, as far as I can tell, in the FERC decision.

The third, Subsection (c), was to serve as an appellate body for actions of the governing board of the ISO. That was obviously disapproved by FERC.

And there is a question I'll speak to in a moment as to the State of California law in the face of that disapproval.

The other function, of which you are well aware, is that the Oversight Board was to determine the composition in terms of service and appoint the members of these two governing boards.

The appointment of members on the reading of the language of the statute would appear to contemplate a role in ongoing filling of vacancies on these boards, whether by *de novo* appointment or some ratification.

By implication it could be argued that with the role given to the Oversight Board to determine the composition in terms of service, that changes in the composition in terms of service might require some ratification by the Oversight Board.

The advice that I believe I've given to each of the Board members individually and will share with the audience here, is that the Oversight Board meets the definition of a state agency within the Government Code.

That without having to argue the validity of FERC's ruling on the Federal Power Act, there is rather clear guidance in California controlling law as to what a state agency is supposed to do when faced with a question of federal preemption. That appears in Article 3, Section 3.5 of the California Constitution, which prohibits a state agency from declining to enforce or carry out the provisions of a California statute on the grounds that it conflicts with federal law unless a Court of Appeals so rules.

So the agencies of the State of California do not have the ability to acquiesce to a FERC opinion that the Federal Power Act was preemptive.

With that in mind, and without necessarily trying to offend the FERC, the Oversight Board then will be bound to make decisions that are consistent with all of the statutory provisions in 1890, absent a legislative change of those provisions or a court ruling that some of them are, in fact, preemptive.

**ASSEMBLYWOMAN MARTINEZ:** Thank you.

**CHAIRMAN ANDERSON:** Okay.

**MR. COLEMAN:** Yes. I guess there's just one other thing. Mr. Freeman, maybe when we reconvene, you could give some thought to what happens January 1, 1998 when the board, the temporary board, if that's the way we go, resigns and a new board is appointed.

I guess what I'm getting at is I find your suggestion fairly attractive for a whole bunch of practical reasons. But I don't know if it just delays the inevitable.

So it would be interesting to hear from you, after you've had a chance to think about it, would you expect this group to continue to appoint board members? Would you go with the Bylaws and have them elected by the various classes?

I think this governance issue surrounding the Board is important when we consider whether or not we're appointing a permanent governing board or a temporary one.

**MR. FREEMAN:** I'll certainly think about it some more.

The thought I had at the time I made the suggestion is that it would just simply, if you honor the views of the various classes at all, it would give those classes a chance to make a -- to review the performance of their representative and either re-recommend them or recommend someone else.

I mean it wasn't so much that there was a temporary



board, but rather that that would be in time for this Board to assert itself with the benefit of some experience and put its -- and then award a longer term to the members. It's as though you had someone do a trial period as a new employee. That was the thought. But we'll think about a few things.

**MR. COLEMAN:** Thank you.

**CHAIRMAN ANDERSON:** Entertain a motion to adjourn?  
Will we adjourn to the 19th of March at 10:00 a.m.

again?

**MR. COLEMAN:** That's correct.

**MR. PUGH:** Yes.

**CHAIRMAN ANDERSON:** All in favor?

**VOICES IN UNISON:** Aye.

**CHAIRMAN ANDERSON:** Meeting adjourned.

[Meeting adjourned at 12:30 p.m.]

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**CERTIFICATE OF REPORTER**

I, **GEORGE PALMER**, a duly commissioned Reporter of **CourtScribes**, do hereby declare and certify under penalty of perjury that I have recorded the foregoing Board hearing which was held and taken at the **STATE of CALIFORNIA OVERSIGHT BOARD, In the Matter of: Electric Industry Restructuring** in Sacramento, California on the **14th day of March 1997**.

I also declare and certify under penalty of perjury that I have caused the aforementioned hearing to be transcribed, and that the foregoing pages constitute a true and accurate transcription of the aforementioned hearing.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

Dated this **15th day of March 1997** at Foresthill, California.

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**GEORGE PALMER**  
**REPORTER**